GRACEFUL FRONTIER SDN BHD & ORS v. THEOW SAY KOW & ANOR

HIGH COURT MALAYA, GEORGETOWN
KENNETH ST JAMES J
[CIVIL SUIT NO: PA-22NCVC-220-11-2020]
22 OCTOBER 2025

Abstract – *(i) A party who publishes or causes to be published a notice containing words with a clear ordinary and natural meaning that impute dishonourable conduct to another party is liable for libel, provided the words expose the plaintiffs to hatred, ridicule, or contempt, or lower them in the estimation of right-thinking members of society generally; (ii) A non-client who assists the principal in communicating, drafting, preparing or causing the publication of a defamatory notice is also liable for publication if, on a balance of probabilities, their conduct demonstrates malicious intent or, at least, recklessness to defame the plaintiffs and injure their business reputation. The defence of qualified privilege for a solicitor/agent publishing a statement on behalf of a client is not available if the client himself cannot avail himself of the defence.*

TORT: *Defamation – Libel – Claim for damages – Notice published in newspaper – Notice referred to court orders – Notice allegedly contained impugned words or statements defamatory of claimants – Whether elements of libel established – Whether notice contained defamatory words which referred to claimants – Whether alleged tortfeasors published notice or caused notice to be published – Whether notice published in bad faith or maliciously – Whether notice published in reckless disregard as to whether defamatory contents were true or otherwise – Whether claimants entitled to damages – Whether there were defences available to alleged tortfeasors – Whether claimants' action abuse of process against alleged tortfeasors – Defamation Act 1957, ss. 8, 9 & 11*

The plaintiffs were companies. The first to fifth plaintiffs were the owners of the lands and properties built on them. The lands and properties built on them made up the development called Auto-City Phase 3 ('AC3'). The properties in AC3 were tenanted to third parties for rent. AC3 was part of the bigger development called Auto-City. The sixth plaintiff was the marking and property management arm of Auto-City while the seventh plaintiff was the holding company for the third, fourth and fifth plaintiffs. It was pleaded by the plaintiffs that (i) the first ('Henry') and second ('Ravin') defendants published or caused to be published a notice in The Star newspaper ('notice'), which contained words or statements that were defamatory of the plaintiffs;

(ii) the notice referred to two Court of Appeal orders and one of them concerned three appeals which arose from the High Court suits. In the pertinent suit ('Suit 52'), Henry was the plaintiff and his brother ('Gary') and his companies were the defendants; (iii) Suit 52 was Henry and Gary's dispute about the shares in three property development companies, namely, Juru Auto-City Sdn Bhd ('JAC'), Highway Landmark Sdn Bhd ('HL') and Western Frontier Sdn Bhd ('WF') and the ownership of four lots of lands that these companies used to own. Three of the four lots made up Auto-City Phase 1 and the fourth lot made up Auto-City Phase 2; (iv) In Suit 52, Henry also laid claim to another three lots of land, which were developed into AC3; (v) Henry was partially successful in his three appeals to the Court of Appeal. The Court of Appeal ordered the Auto-City Phase 1 and Phase 2 lands to be returned to JAC, HL and WF. The Court of Appeal, however, did not make any orders on the three AC3 lands. Hence, the present libel suit by the plaintiffs against Henry and Ravin. Henry and Ravin, on the other hand, counterclaimed against the plaintiffs for abuse of process.

Held (allowing plaintiffs' claim; dismissing defendants' counterclaim):

(1) The ordinary and natural meaning of the impugned words in the notice and their imputation was that: (i) the first to fifth plaintiffs were not the owners of the AC3 lands; (ii) Henry's companies, namely JAC, HL and WF were the true owners of the AC3 lands; (iii) the first to fifth plaintiffs were to return the AC3 lands to Henry's companies, *ie*, JAC, HL and WF; (iv) the first to fifth plaintiffs wrongfully appropriated the AC3 lands from JAC, HL and WF and were now ordered to return the lands to JAC, HL and WF; (v) the first to fifth plaintiffs had no proprietary rights to the AC3 lands. They, therefore, had no right to rent the properties built on the AC3 lands to third party tenants; and (vi) as a result, the public, including the tenants, dealt with the AC3 lands and properties built on them with the plaintiffs at their own peril as they were required to account, particularly financially, for those dealings with the rightful owners, *ie*, Henry's companies, JAC, HL and WF. (para 34)

(2) The impugned words (i) were defamatory of the plaintiffs because the impugned words exposed the plaintiffs to 'hatred, ridicule or contempt'; (ii) lowered or tend to lower the plaintiffs 'in the estimation of right-thinking members of society generally'; (iii) imputed that the plaintiffs were dishonourable or discreditable and lacked integrity; and (iv) tend to excite against the plaintiffs 'the adverse opinion of others'. Therefore, the impugned words were libellous of the plaintiffs. Whether the impugned words referred to the plaintiffs was not in dispute – the plaintiffs were named in para. 1.2 and the unnumbered penultimate paragraph of the notice. (paras 37-39)

(3) Ravin was liable for publishing the notice or causing the notice to be published based on the following evidence: (i) Ravin, in his witness statement, testified that he assisted Henry in communicating with The Star to publish the notice; (ii) the email communication between Ravin's firm and The Star, concerning publishing the notice was even copied to him; (iii) in cross-examination, Henry testified that the lawyer from Ravin's office, 'drafted' the notice and 'improved' Henry's guidelines concerning the content of the notice; (iv) the email communication from Ravin's office with The Star amending the notice to its final contents published; and (v) in cross-examination, Ravin admitted that his office 'typed out the notice' and 'prepared the notice'. (para 54)

(4) The evidence of Henry's and Ravin's conduct led to the conclusion that, on the balance of probabilities, they published the notice or caused the notice to be published with malicious intent or, at least, recklessly, to defame the plaintiffs and injure their business reputation in the eyes of the public, including the persons who were doing or would be doing business with the plaintiffs. (para 59)

(5) Henry could not avail himself of the defences of justification, the *Lucas-Box* defence, the statutory defences under ss. 8, 9 and 11 of the Defamation Act 1957, qualified privilege, the *Reynolds*' public interest defence, fair comment and absolute privilege. Ravin argued that even if he was found to have published or caused the notice to be published, the defence of qualified privilege was available to him. The principle is that if a solicitor's client, *ie*, Henry, had published a libellous statement and the defence of qualified privilege is available to the client, then if the solicitor, on behalf of the client published the libellous statement, then the defence of qualified privilege would also be available to the solicitor. In other words, the defence of qualified privilege would extend to the solicitor. This was hardly applicable in this case. In this case, qualified privilege was not available to Henry and hence, it was not available to Ravin. (paras 73, 87, 88, 103, 112, 113, 116 & 121)

(6) The plaintiffs' action against Henry and Ravin was not frivolous or unarguable or unsustainable. Instead, there was merit in their claim. The plaintiffs' suit, therefore, was not an abuse of the process against Henry and Ravin. (paras 127 & 128)

(7) The defendants were ordered to pay, *inter alia*, (i) RM120,000 to each of the first to fifth plaintiffs as general and aggravated damages; (ii) RM60,000 to the sixth and seventh plaintiffs, respectively, as general and aggravated damages; (iii) RM20,000 to each of the first to fifth

plaintiffs as exemplary damages; and (iv) RM10,000 to the sixth and seventh plaintiffs, respectively, as exemplary damages. The court further ordered for the publication of an apology once in The Star and of the same size as the notice to be placed in the legal notice section of The Star. (para 143)

Case(s) referred to:

Adam v. Ward [1917] AC 309 ***(refd)***

Baker v. Carrick [1894] 1 QB 838 ***(refd)***

Bre Sdn Bhd & Ors v. Tun Datuk Patinggi Hj Abdul Rahman Ya'kub [2005] 2 CLJ 645 CA ***(refd)***

Chin Choon v. Chua Jui Meng [2005] 2 CLJ 569 CA ***(refd)***

Chok Foo Choo v. The China Press Bhd [1999] 1 CLJ 461 CA ***(refd)***

Dato' Sri Dr Mohamad Salleh Ismail & Anor v. Mohd Rafizi Ramli [2022] 5 CLJ 487 FC ***(refd)***

Dr Chong Eng Leong v. Tan Sri Harris Mohd Salleh [2017] 10 CLJ 657 CA ***(refd)***

Fitters Diversified Bhd & Ors v. Mohd Roslan Mahayudin & Ors [2024] 4 CLJ 657 CA ***(refd)***

Joshua Benjamin Jeyaretnam v. Goh Chok Tong [1989] CLJU 34; [1989] 1 LNS 34 ***(refd)***

Liew Yew Tiam & Ors v. Cheah Cheng Hoc & Ors [2001] 2 CLJ 385 CA ***(refd)***

Lim Guan Eng v. Ruslan Kassim & Another Appeal [2021] 4 CLJ 155 FC ***(refd)***

MGG Pillai v. Tan Sri Dato Vincent Tan Chee Yioun & Other Appeals [1995] 2 CLJ 912 CA ***(refd)***

Mkini Dotcom Sdn Bhd & Ors v. Raub Australian Gold Mining Sdn Bhd [2021] 7 CLJ 145 FC ***(refd)***

Mohamed Hafiz Mohamed Nordin v. Eric Paulsen & Another Appeal [2018] CLJU 1731; [2018] 1 LNS 1731 CA ***(refd)***

Neeld & Ors v. Western Broadcasting Co Ltd [1976] 65 DLR (3d) 574 ***(refd)***

Price Waterhouse Intrust Ltd v. Wee Choo Keong And Others [1994] 2 SLR(R) 1070 ***(refd)***

Raja Syahrir Abu Bakar & Anor v. Manjeet Singh Dhillon & Other Appeals [2019] 4 CLJ 301 CA ***(refd)***

S Pakianathan v. Jenni Ibrahim & Another Case [1988] 1 CLJ 771; [1988] 1 CLJ (Rep) 233 SC ***(refd)***

Sambaga Valli K R Ponnusamy v. Datuk Bandar Kuala Lumpur & Ors And Another Appeal [2017] CLJU 500; [2017] 1 LNS 500 CA ***(refd)***

Seema Elizabeth Isoy v. Tan Sri David Chiu Tat-Cheong [2024] 6 CLJ 635 FC ***(refd)***

Syarikat Bekalan Air Selangor Sdn Bhd v. Tony Pua Kiam Wee [2015] 8 CLJ 477 FC ***(refd)***

Syed Husin Ali v Sharikat Penchetakan Utusan Melayu Bhd & Anor [1973] CLJU 146; [1973] 1 LNS 146 HC ***(refd)***

Syed Nadri Syed Harun & Anor v. Lim Guan Eng & Other Appeals [2019] 2 CLJ 631 CA ***(refd)***

Tuanku Nurzahirah v. Clare Louise Brown & Ors [2023] 4 CLJ 252 HC ***(refd)***

Tun Datuk Patinggi Hj Abdul Rahman Ya'kub v. Bre Sdn Bhd & Ors [1995] CLJU 304; [1995] 1 LNS 304 HC ***(refd)***

WLP Industrial Solutions (M) Sdn Bhd v. KL-Kepong Rubber Products Sdn Bhd [2011] CLJU 818; [2011] 1 LNS 818 HC ***(refd)***

Legislation referred to:
Defamation Act 1957, ss. 8, 9, 11
Evidence Act 1950, s. 114(g)

Other source(s) referred to:
Gatley, C, *Gatley on Libel and Slander*, 2008, 11th edn, Sweet & Maxwell, p 339

For the plaintiffs - Raj Shankar, Gregory Ling & Prem Anand; M/s Raj Shankar
For the 1st defendant - John Khoo, Martin Khoo, Nurul Alia Afina Mohd Zaidi & Indhumaliniy (Pupil); M/s Ismail, Khoo & Assocs
For the 2nd defendant - T Gunaseelan & Ong Ken-Jeen; M/s Vello & Assocs

Reported by Lina E

JUDGMENT

Kenneth St James J:

Prelusion

[1] This is a libel suit. The defendants are said to have published a notice in a newspaper which is defamatory of the plaintiffs.

[2] The plaintiffs sued the defendants. The defendants mounted a host of defences, and a counterclaim.

[3] Who should succeed?

Pertinent Facts

[4] The plaintiffs are all companies. The first to the fifth plaintiffs (P1 to P5) are the owners of the lands (and properties built on them). The lands and properties built on them make up the development called Auto-City Phase 3 (AC3).

[5] The properties in AC3 are tenanted to third parties for rent.

[6] AC3 is part of the bigger development called Auto-City.

[7] The sixth plaintiff (P6) is not an owner of the lands and properties. P6 is the marketing and property management arm of Auto-City. P6 markets and promotes events, to attract customers to patronise the businesses of P1 to P5's tenants, to increase the tenants' revenue.

[8] The seventh plaintiff (P7) is the holding company for P3, P4 and P5.

[9] The first defendant (Henry) and his brother: Gary Teoh Kiang Hong (Gary), have been in protracted litigation against each other for over a decade (since 2008).

[10] The second defendant (Ravin) is an advocate and solicitor, who acted for Henry in his litigation against Gary.

[11] The plaintiffs plead that Henry and Ravin published or caused to be published a notice in The Star newspaper on 28 September 2020 (notice). The notice contains the impugned words or statements which are the subject matter of this defamation suit (for libel). The plaintiffs plead that the impugned words and statements are defamatory of the plaintiffs.

[12] The notice refers to two Court of Appeal (CA) orders – the 29 January 2020 CA order and the 24 August 2020 CA order. The 29 January 2020 CA order concerns three appeals. Of the three appeals, the pertinent appeal is Appeal No: P-02(W)-1179-06/2017 (Appeal 1179).

[13] The CA's grounds of judgment for the 29 January 2020 CA order (GOJ) was released on 29 January 2020, too.

[14] The three appeals to the CA arise from three Penang High Court suits. The pertinent High Court suit that resulted in the pertinent Appeal 1179 is Penang High Court Suit No: 22-52-2010 (Suit 52). In Suit 52, Henry was the plaintiff and Gary and his companies were the defendants. In Suit 52, Henry claimed ownership of the whole of Auto-City.

[15] Suit 52 was Henry and Gary's dispute about the shares in three property development companies: Juru Auto-City Sdn Bhd (JAC), Highway Landmark Sdn Bhd (HL), and Western Frontier Sdn Bhd (WF), and the ownership of four lots of land that these companies used to own. Three of the four lots make up Auto-City Phase 1, and the fourth lot makes up Auto-City Phase 2.

[16] In Suit 52, Henry also laid claim to another three lots of land, which were developed into AC3. It is not disputed that the AC3 lands were never purchased from JAC, HL or WF, but were instead acquired from the Penang Development Corporation (PDC). It is important to note that in the CA GOJ, these three lots were identified as the "PDC lands" and "Auto-City 3", *ie*, AC3.

[17] Henry was partially successful in his three appeals to the CA. The CA ordered the Auto-City Phase 1 and Auto-City Phase 2 lands to be returned to JAC, HL, and WF. But, the CA did not make any orders on the AC3 lands. The 29 January 2020 CA order reflects this fact (position).

[18] The relevance of the 24 August 2020 CA order is merely that it stayed the 29 January 2020 CA order.

The Notice

[19] The impugned words of the notice are reproduced here *verbatim* and in their entirety (with my emphases and notes in square brackets added):

IN THE COURT OF APPEAL OF MALAYSIA
(APPELLATE JURISDICTION)
CIVIL APPEAL NO: P-02(W)-1179-06/2017

ANTARA

THEOW SAYKOW @ TEOH KIANG SENG, Henry

... PERAYU

DAN

1. GRACEFUL FRONTIER SDN. BHD. (583715-D)
2. EVEREST LANDMARK SDN. BHD. (445477-D)
3. TEOH KIANG HONG
4. ONG BEE LEE
5. LIM CHONG SEONG
6. LATSMANAN PONNUSAMY
7. KHOR GAIK THIAM
8. KHOR GAIK THIAM & LATSMANAN
9. GOLDEN CASTLE CITY SDN BHD (681063-A)
10. GOLDEN HIGHWAY LANDMARK SDN BHD (665095-X)
11. PENTAS OTO SDN. BHD. (680525-V)
12. GOLDEN HIGHWAY-CITY SDN BHD (447109-W)
13. GOLDEN HIGHWAY AUTO-CITY SDN BHD (603091-A)
14. GOLDEN STAR LAND SDN BHD (680748-U)
15. HIGHWAY CITY LAND SDN BHD (681067-T)
16. GOLDINI SANTUARY SDN BHD (620688-X)
17. OCBC BANK MALAYSIA BERHAD
18. PUBLIC BANK BERHAD ... RESPONDEN-RESPONDEN

LEGAL NOTICE CONCERNING AUTO-CITY, PENANG ADVERTISEMENT?

NOTICE IS HEREBY GIVEN TO THE PUBLIC THAT:

1. Pursuant to the Court of Appeal order dated 29-01-2020, it was declared in the Grounds of Judgement that:

1.1 The Sale & Purchase Agreements resulting in the transfer of properties from THEOW SAY KOW @ TEOH KIANG SENG's ("Henry") companies, Juru Auto-City Sdn Bhd, Highway Landmark Sdn Bhd and Western Frontier Sdn Bhd to TEOH KIANG HONG's ("Gary") companies, Graceful Frontier Sdn Bhd and Everest Landmark Sdn Bhd are sham agreements;

A 1.2. That the lands and plots in Auto-City phase 1 (Lot 575, 576 & 582), Auto-City phase 2 (Lot 650) and Auto-City phase 3 (Lot 651, 652 & 653), Jalan Perusahaan, Auto-City, North South Juru Interchange, 13600 Penang, Malaysia, are to be returned to Henry's companies, namely, JURU AUTO-CITY SDN BHD (137490-H), HIGHWAY LANDMARK SDN BHD (344772-X) and WESTERN
B FRONTIER SDN BHD (313190-D) by Gary's companies, Graceful Frontier Sdn Bhd [P1], Everest Landmark Sdn Bhd, Golden Castle City Sdn Bhd [P2], Golden Highway Landmark Sdn Bhd [P3], Pentas Oto Sdn Bhd [P4], Golden Highway-City Sdn Bhd, Golden Highway Auto-City Sdn Bhd [P6], Golden Star Land Sdn Bhd [P7], Highway City Land Sdn Bhd [P5] and Goldini Santuary Sdn Bhd.

C 1.3. That Henry's companies, Juru Auto-City Sdn Bhd, Highway Landmark Sdn Bhd and Western Frontier Sdn Bhd, are now the LEGAL AND LAWFUL OWNER and proprietor of the lands which from [sic: form] Auto- City phase 1, Auto-City phase 2 and Auto-City phase 3 [AC3]. On 24-08-2020, the Court of Appeal had
D granted stay on the following terms:

1. That the execution of orders of this Honourable Court dated 29 January 2020 and all proceedings to enforce the said orders be stayed;

2. That the Appellant, Theow Say Kow @ Teoh Kiang Seng,
E Henry be restrained from disposing of, encumbering or dealing with in any way whatsoever, any of his shares and interests in Juru Auto-City Sdn Bhd, Highway Landmark Sdn Bhd, and Western Frontier Sdn Bhd, which form the subject matter of the Share Sale Agreement dated 28 January 2005

F In the circumstances, there is NO STAY on those declarations at paragraph 1.1 to 1.3 above. Consequently, the declarations are IN FORCE.

THE PUBLIC IS NOW PUT ON NOTICE that anyone dealing with Gary's companies, Graceful Frontier Sdn Bhd [P1], Everest Landmark
G Sdn Bhd, Golden Castle City Sdn Bhd [P2], Golden Highway Landmark Sdn Bhd [P3], Pentas Oto Sdn Bhd [P4], Golden Highway-City Sdn Bhd, Golden Highway Auto-City Sdn Bhd [P6], Golden Star Land Sdn Bhd [P7], Highway City Land Sdn Bhd [P5] and Goldini Santuary Sdn Bhd are at YOUR OWN PERIL AND MAY BE HELD ACCOUNTABLE for all monies paid to the companies concerned above and the consequences
H arising thereform.

For further enquiries, please email: contact@new.autocity.com

The Issues To Be Tried

[20] These are the agreed issues to be tried (ITBT) that the parties went to
I trial with, which the parties are asking for the court to determine:

(i) whether the notice contained defamatory words, which referred to the plaintiffs?

(ii) whether Ravin published the notice or caused the notice to be published?

(iii) whether the notice was published in bad faith or maliciously?

(iv) whether the notice was published in reckless disregard as to whether the defamatory contents were true or otherwise?

(v) whether the plaintiffs are entitled to punitive and/or exemplary damages?

(vi) whether the defences of qualified privilege, the Reynolds' public interest defence, absolute privilege, justification, the *Lucas-Box* defence, and the defences in ss. 8, 9 and 11 of the Defamation Act 1957 (Defamation Act) apply to Henry?

(vii) whether the defence of qualified privilege applies to Ravin?

(viii) whether the plaintiffs' action is an abuse of the process against Henry and Ravin?

The Law Of Libel Applicable To This Suit

The Three Elements For Libel

[21] To succeed in a suit for defamation, particularly in libel, the plaintiffs must prove these three trite elements:

(i) the words complained of (the impugned words) are defamatory;

(ii) the impugned words refer to the plaintiffs; and

(iii) the impugned words were published to persons other than to the plaintiffs, *ie*, third parties:

– *Fitters Diversified Bhd & Ors v. Mohd Roslan Mahayudin & Ors* [2024] 4 CLJ 657; [2024] 3 MLJ 937; [2024] 5 MLRA 291; at paras. [32], [33].

The First Issue: Whether The Notice Contained Defamatory Words Which Referred To The Plaintiffs

[22] This first issue is the first two elements required to succeed in a suit for libel, *ie*, (i) the impugned words are defamatory, and (ii) the impugned words refer to the plaintiffs.

First Element Of Libel: Whether The Impugned Words Are Defamatory: The Meaning-Of-The-Words Issue

Legal Principles To Follow

[23] These are the principles I have to follow when I determine whether the impugned words, in their natural and ordinary meaning, are defamatory. First, the impugned words are defamatory if they were "calculated to expose the plaintiff to hatred, ridicule or contempt in the mind of a reasonable man"

A or "would tend to lower the plaintiff in the estimation of right-thinking members of society generally" – the CA judgment in *Bre Sdn Bhd & Ors v. Tun Datuk Patinggi Hj Abdul Rahman Ya'kub* [2005] 2 CLJ 645; [2005] 3 MLJ 485; [2005] 3 AMR 1; [2005] 1 MLRA 289 at para. [10].

B **[24]** Second, the "tendency of the impugned words" may also be defamatory, "even if the words did not lower the plaintiff in the estimation of society" – *Seema Elizabeth Isoy v. Tan Sri David Chiu Tat-Cheong* [2024] 6 CLJ 635; [2024] 4 MLJ 260; [2024] 5 AMR 341; [2024] 5 MLRA 68; at para. [32].

C **[25]** It is therefore not material whether the impugned words actually defamed the plaintiffs. The "law looks only to the tendency" of the impugned words to do so – the High Court judgment in *Tun Datuk Patinggi Hj Abdul Rahman Ya'kub v. Bre Sdn Bhd & Ors* [1995] CLJU 304; [1995] 1 LNS 304; [1996] 1 MLJ 393; [1995] 4 MLRH 877, which was affirmed by the CA on appeal.

D **[26]** Third, whether the impugned words "impute to the plaintiff any dishonourable or discreditable conduct", or "a lack of integrity" – *Chok Foo Choo v. The China Press Bhd* [1999] 1 CLJ 461; [1999] 1 MLJ 371 at MLJ p. 374, para. H; [1999] 1 AMR 753; [1998] 2 MLRA 287.

E **[27]** Fourth, whether the impugned words tend to "excite against the plaintiff the adverse opinion of others", or constitute an attack on the plaintiff's "moral character" in the context of "a crime, dishonesty, untruthfulness, ingratitude or cruelty" – *Syed Husin Ali v. Sharikat Penchetakan Utusan Melayu Berhad & Anor* [1973] CLJU 146; [1973] 1 LNS
F 146; [1973] 2 MLJ 56 at MLJ p. 58, para. D; [1973] 1 MLRH 153.

[28] Fifth, when I am evaluating whether the impugned words are defamatory, *ie*, whether the natural and ordinary meaning of the words used contains a defamatory meaning:

G (i) I am to consider the meaning of the words objectively; in other words, the meaning of the words to "ordinary reasonable persons using their general knowledge and common sense";

(ii) I am not to confine the words to their "strict literal meaning" but to extend them to "inferences and implications which could reasonably be
H drawn" by such reasonable persons; and

(iii) I must note that the "meaning intended by the defendant is irrelevant"; that no "extrinsic evidence" is admissible to construe the words; and that the "meaning must be gathered from the words themselves";

I – *Mohamed Hafiz Mohamed Nordin v. Eric Paulsen & Another Appeal* [2018] CLJU 1731; [2018] 1 LNS 1731; [2019] 1 MLJ 580; [2018] 8 AMR 558; [2019] 1 MLRA 125; at MLJ p. 587 para. [22].

[29] Sixth, when I determine whether the impugned words are defamatory, I am to consider the meaning of the words in the eyes of the "ordinary and reasonable" person, with "fair average intelligence", who is "not avid for scandal", but "who may engage in some degree of loose thinking" and "reading between the lines", but "who, at the same time, should not be unduly suspicious" – *Lim Guan Eng v. Ruslan Kassim & Another Appeal* [2021] 4 CLJ 155; [2021] 2 MLJ 514; [2021] 3 MLRA 207; [2021] AMEJ 0200; at CLJ para. [29] or MLJ para. [87].

[30] Seventh, when I consider whether the impugned words are defamatory of the plaintiffs, I must consider the words of the impugned statements "in the context of the whole" (here: the whole notice), and "not simply on isolated passages" – *Lim Guan Eng v. Ruslan Kassim* (*supra*), at CLJ para. [30] or MLJ para. [88].

My Findings On The Meaning Of The Impugned Words

[31] To understand the meaning of the impugned words, I need to understand the 29 January 2020 CA order. These are the pertinent factors in the 29 January 2020 order:

(i) the lands to be returned are the lands concerning Auto-City Phase 1 and Auto-City Phase 2, and not AC3; and

(ii) the orders for reliefs were made against Everest Landmark Sdn Bhd (which is not a party to this suit) and Graceful Frontier Sdn Bhd (P1) concerning Auto-City Phase 1 and Auto-City Phase 2, and not against the plaintiffs in this suit, and not concerning AC3.

[32] To put it simply, the 29 January 2020 CA order (which means the outcome of the appeals that were determined by the CA) were only about Auto-City Phase 1 and Auto-City Phase 2, not AC3.

[33] These aspects of the impugned words in the notice are not true (or not correct):

(i) the plaintiffs are to return the lands in AC3;

(ii) all the lands, including the AC3 lands are to be returned to JAC, HL, and WF, which were described as "Henry's companies", implying that Henry owns them. But these companies actually belong to the Teoh family, and are effectively owned by Gary, Henry and their mother (not just Henry);

(iii) JAC, HL and WF, after the litigation up to the CA, are now the owners of the AC3 lands. This is not true and incorrect because the CA did not declare that JAC, HL and WF now own the AC3 lands. The AC3 lands were purchased from the PDC. JAC, HL and WF have no stake in the AC3 lands; and

(iv) there was no stay of the effects of the 29 January 2020 CA order, when in fact the 24 August 2020 CA order indeed stayed the 29 January 2020 CA order. (The notice was dated 28 September 2020, which was after the 24 August 2020 CA stay order).

[34] Assessing the ordinary and natural meaning of the impugned words in the notice, through the eyes of the ordinary reasonable person expounded by case law authorities, I find that the ordinary and natural meaning of the impugned words and their imputation is that:

(i) P1 to P5 are not the owners of the AC3 lands;

(ii) Henry's companies, namely JAC, HL and WF, are the true owners of the AC3 lands;

(iii) P1 to P5 are to return the AC3 lands to Henry's companies, *ie*, JAC, HL and WF;

(iv) P1 to P5 wrongfully appropriated the AC3 lands from JAC, HL and WF, and are now ordered to return the lands to JAC, HL and WF;

(v) P1 to P5 have no proprietary rights to the AC3 lands. They, therefore, have no right to rent the properties built on the AC3 lands to third party tenants; and

(vi) as a result, the public, including the tenants, deal with the AC3 lands (and properties built on them) with the plaintiffs at their own peril, as they are required to account (particularly: financially) for those dealings with the rightful owners (Henry's companies: JAC, HL and WF).

[35] In other words, even though the plaintiffs did not own the AC3 lands, the plaintiffs performed business with the AC3 lands. The litigation between Henry and Gary has resulted in the CA declaring that P1 to P5 are not the rightful owners of the AC3 lands and the properties built on them. Yet the plaintiffs rented out the properties on the AC3 lands to tenants. The public, particularly the persons who have done business with the plaintiffs, do so at their own peril, in that they will have to account (to Henry, or JAC, HL or WF) for the value of the businesses they have performed with the plaintiffs.

[36] Simply put, P1 to P5 did business (for instance: rented out) using lands and properties they did not own, and so the persons who did business with them have to account for the value of the business (such as rent) to the rightful owners, namely Henry and his companies.

[37] I find that the impugned words are defamatory of the plaintiffs, because the impugned words exposed the plaintiffs to "hatred, ridicule or contempt". The impugned words also lower or tend to lower the plaintiffs "in the estimation of right-thinking members of society generally". The impugned words impute that the plaintiffs are dishonourable or discreditable, that the plaintiffs lack integrity. And the impugned words tend to "excite" against the plaintiffs, "the adverse opinion of others".

[38] I therefore find that the impugned words are libellous of the plaintiffs. A

Second Element Of Libel: Whether The Impugned Words Refer To The Plaintiffs

[39] The second element of libel – whether the impugned words refer to the plaintiffs – is not in dispute. The plaintiffs are named in para. 1.2 and the unnumbered penultimate paragraph of the notice. B

My Findings On The First Issue

[40] On the first issue, I find that the notice contained defamatory words which refer to the plaintiffs.

The Second Issue: Whether Ravin Published The Notice Or Caused The Notice To Be Published? C

Ravin Gave Three Different Versions Of His Participation In The Publication Of The Notice

[41] Firstly, Ravin testified to three different versions of his participation in getting the notice published. In cross-examination, Ravin gave three different versions of his involvement in the publication of the notice. D

[42] The first version was that Ravin was just a solicitor, "assisting" Henry to communicate with The Star newspaper to publish the notice. (To publish the notice, The Star requires communication with instructions to publish from a firm of solicitors). In other words, Ravin was a mere conduit. The first version was that Ravin merely received the notice (already prepared by Henry) and merely forwarded it to The Star, with the required cover letter (or email). E

[43] The second version was that Ravin's office typed out the notice which was published. Ravin's office effectively meant Ravin himself, as he is the sole proprietor of his firm. F

[44] The third version was more elaborate. It was that Henry gave Ravin guidelines for what he (Henry) wanted to say in the notice. With the guidelines, Ravin prepared the notice. It was then sent to Sri Ram's office. Sri Ram's office amended the notice and sent it back to Ravin. Ravin finalised the amended notice and sent it to The Star for publication. G

[45] Mr Teng – Ravin's legal assistant – participated in preparing the notice. Henry testified that he (Henry) drafted the guidelines and passed them to Mr Teng. Henry testified that Mr Teng "improved" the guidelines and prepared the notice. Then, Mr Teng sent it to Sri Ram's office for them to "check through everything" before publishing it. H

[46] Additionally, there was evidence of email communication between Mr Teng and Puan Suhana of the Legal Ads Department of The Star about amending para. 1.2 of the notice (which contains statements about the AC3 lands) and about approving the final version of the notice for publication. I

[47] Further, there was no evidence of Henry's guidelines, and no evidence of any communication from Sri Ram's office.

[48] Furthermore, Mr Teng was not called to testify for Ravin. Mr Teng's testimony would have been material to prove the asserted facts about whether Ravin participated in, or was involved in, getting the notice published, or whether Ravin caused the notice to be published. The plaintiffs asked for an evidential presumption to be made against Ravin under s. 114(g) of the Evidence Act 1950.

[49] Section 114(g) provides that:

> *Section 114. Court may presume existence of certain fact.*
>
> The court may presume the existence of any fact which it thinks likely to have happened, regard being had to the common course of natural events, human conduct, and public and private business, in their relation to the facts of the particular case.
>
> ILLUSTRATIONS
>
> The court may presume:
>
> ...
>
> (g) that evidence which could be and is not produced would if produced be unfavourable to the person who withholds it;

[50] I find that it is appropriate in this circumstance to make the adverse presumption against Ravin, which is that if Mr Teng had been called to testify, his evidence would be unfavourable to Ravin concerning Ravin's participation and involvement in publishing the notice, and in causing the notice to be published.

[51] I find that the evidence is compelling, for me to find, on the balance of probabilities, that Ravin sufficiently participated in publishing the notice. I find that Ravin was responsible for the publication of the notice.

Everyone Who Is Involved In Causing The Notice To Be Published Is Liable For Defaming The Plaintiffs

[52] Secondly, I am guided and bound to follow the principle that everyone who is "involved" in the publication of defamatory imputations against the plaintiff is liable for defamation – *Raja Syahrir Abu Bakar & Anor v. Manjeet Singh Dhillon & Other Appeals* [2019] 4 CLJ 301; [2020] 3 MLJ 482; [2019] 4 MLRA 218.

[53] In *Raja Syahrir* (*supra*), the CA propounded:

> [75] The plaintiff's action against the second and third defendants is in respect of the impugned article. Following the court's findings that the first defendant's words are defamatory, and since the first defendant's words form the pith and substance or just about the entire article, that

finding which we have just affirmed, applies and binds the second and third defendants. These defendants wrote down, reported and published the first defendant's libelous words in which case, they are equally liable for defaming the plaintiff. *In an action for libel, every person involved in defaming the individual remains liable whether that person wrote or merely passed the defamatory article or comment on to the next listener or recipient* – see p. 348 of *Halsbury's Laws of England*, (5th Ed, Vol 32):

> *Every person who takes part in or procures the publication of a libel is prima facie liable jointly and severally for all the damage caused by it. Thus, if a libel appears in a newspaper, the author of the libel and the proprietor, editor printer, publisher and vendor of the newspaper are prima facie jointly and severally liable.*
>
> (emphasis added)

[54] The evidence which compels me to find that Ravin is liable for publishing the notice or causing the notice to be published includes the following evidence:

(i) Ravin, in his witness statement, testified that he assisted Henry in communicating with The Star to publish the notice;

(ii) the email communication between Ravin's firm and The Star, concerning publishing the notice, was even copied to him;

(iii) in cross-examination, Henry testified that Mr Teng, the lawyer from Ravin's office, "drafted" the notice and "improved" Henry's guidelines (concerning the content of the notice);

(iv) the email communication from Ravin's office (through Miss Jenny and Mr Teng) with The Star, amending the notice to its final contents published; and

(v) in cross-examination, Ravin admitted that his office "typed out the notice" and "prepared the notice".

My Finding

[55] On the second issue, I find that Ravin published the notice or caused the notice to be published.

The Third Issue: Whether The Notice Was Published In Bad Faith Or Maliciously?

Malice Defined

[56] Malice was defined by the Supreme Court in *S Pakianathan v. Jenni Ibrahim & Another Case* [1988] 1 CLJ 771; [1988] 1 CLJ (Rep) 233; [1988] 2 MLJ 173; [1988] 1 MLRA 110, at MLJ p. 179, paras. D to I. Express malice is the "desire to injure the person who is defamed". The desire to injure must be "the dominant motive" for the impugned publication. The

proof that the defendant "knew" that the impugned statement is false, or that he had "no genuine belief" in the truth of the impugned statement, is taken as "conclusive evidence of malice".

[57] Also, if the defendant publishes the impugned statement "recklessly" without caring whether the impugned statement is true or not, the defendant is "treated as if he knew" the impugned statement is false. Further, even if the defendant "believed" the impugned statement to be true, but he published the impugned statement because he was "moved by hatred or a desire to injure" the plaintiff, malice on his part would be "rightly inferred".

The Evidence Of Malice

[58] The following evidence satisfies me, on the balance of probabilities, that Henry published or caused the notice to be published in bad faith or with malice:

(i) Henry had been stuck in litigation with Gary since 2008. As at the date of the notice (28 September 2020), Henry had been litigating against Gary for 12 years. Henry wanted to own all the lands and properties that encompass the entire Auto-City project. He wanted total control and ownership of Auto-City;

(ii) Henry lost in the High Court in 2017. He appealed to the CA. The CA only partially allowed his appeal in January 2020. The reliefs and remedies granted to him did not include the AC3 lands and properties. This meant that Henry could not take total control of Auto-City;

(iii) Henry's previous solicitors: Kevin & Co, prepared the draft CA order that did not include any reliefs concerning AC3. Kevin & Co (Henry's own solicitors) took the position that AC3 was not part of the 29 January 2020 CA order. Henry admitted that AC3 was not included in the draft order Kevin & Co prepared. His own solicitors did not include the AC3 lands in the draft CA order. Despite that understanding of the CA order, Henry chose to include the AC3 lands in the notice;

(iv) in February 2020, Henry filed a motion for leave to appeal to the Federal Court. This reveals that Henry knew that the CA order did not give him a complete victory, because AC3 was still not his to own and control. Henry affirmed the affidavit in support of the motion for leave to appeal on 27 February 2020. He averred that the CA did not deal with various prayers in his amended statement of claim. In cross-examination, he admitted that even as long ago as 27 February 2020, he knew that the CA order did not deal with the AC3 lands and properties;

(v) later in July 2020, Henry filed a motion in the CA to clarify or amend the CA order. His affidavit in support of that motion was affirmed on 10 July 2020. In cross-examination, Henry admitted again that when he affirmed that affidavit in support on 10 July 2020, he knew that the AC3 lands were not a part of the CA order;

(vi) through his witness statement, Henry testified at the trial, that he "honestly and genuinely believed" that the CA order allowed his claim to the AC3 lands. This statement, to my mind, is contrary to, or is at least inconsistent with, his admission that he knew and his solicitors knew that the CA order did not grant him the AC3 lands;

(vii) yet, in September 2020, without waiting for the outcome of his motion for leave to appeal to the Federal Court and his motion to clarify or amend the CA order, Henry published the notice;

(viii) the notice misinformed the public, which includes P1 to P5's tenants in AC3, that AC3 lands belong to Henry (or his companies); that P1 to P5 do not own the AC3 lands; that the public, including AC3 tenants, should not do business with the plaintiffs; that any money paid over to the plaintiffs are made at the payors' peril, as they will be made accountable for the money;

(ix) another untrue statement in the notice (published in September 2020) is that there was no stay of the 29 January 2020 CA order. The notice states that the 29 January 2020 CA order granted Henry the AC3 lands. The statement that there was no stay of that CA order means that Henry owns the AC3 lands. But in reality, the 29 January 2020 CA order was in fact stayed by the 24 August 2020 CA order (given earlier in August 2020);

(xi) additionally, Ravin, on Henry's behalf, wrote multiple times to the CA asking for a date from the CA to clarify the terms of the CA order. Ravin's letters, and Henry's motion to clarify or amend the 29 January 2020 CA order, as well as Henry's motion for leave to appeal to the Federal Court, disclose that Henry and Ravin knew, or that they were at least uncertain (which means the existence of recklessness in their conduct), that the CA order did not include the AC3 lands. Yet, Henry and Ravin published the notice or caused the notice to be published;

(xii) this conduct, to me, constitutes both malice (the desire to injure the plaintiffs' reputation). Even if I am wrong about finding malice in Henry's and Ravin's conduct, I find that Henry and Ravin were reckless in publishing the notice or causing it to be published. They were not concerned about whether the content of the notice was true or not. They went ahead to publish the notice or caused it to be published, without first verifying whether the CA had granted Henry

A the AC3 lands. Henry insisted on publicising what could only be his misplaced belief that after the 29 January 2020 CA order, he or his companies owned the AC3 lands; and

(xiii) then, in February 2021, the CA settled and released the sealed 29 January 2020 CA order, which stated that the AC3 lands were not included in the reliefs granted to Henry. Even then, Henry and Ravin did not retract the notice, or published another notice to correct the content of the notice, or to mitigate the effects of the notice. Henry and Ravin also did not apologise for the untrue statements in the notice.

[59] The evidence of their conduct leads me to conclude, on the balance of probabilities, that Henry and Ravin published the notice or caused the notice to be published with malicious intent, or at least recklessly – to defame the plaintiffs and injure their business reputation in the eyes of the public, including the persons who were doing or would be doing business with the plaintiffs.

The Fourth Issue: Whether The Notice Was Published In Reckless Disregard As To Whether The Defamatory Contents Were True Or Otherwise

[60] If the defendant publishes libellous statements recklessly, having no regard to whether the statements are true or false, then the defendant is taken to have known that the statements are false – *Raja Syahrir* (*supra*).

[61] In *Raja Syahrir* (*supra*), the CA held:

> [107] Further, we agree with the learned judge that the defences of qualified privilege of newspaper under s. 12 of the Act, common law qualified privilege and *Reynolds*' qualified defence were not available to the second and third defendants because there was a lack of honest belief in the truth of what was published. This belief is one of the requisite elements as expressed by Lord Diplock in *Horrocks v. Lowe* [1975] AC 135. *The defendants must not be seen to have published the defamatory material 'recklessly, without considering or caring whether it be true or not'. If that is found to be the case, then the defendants will 'be treated as if he knew it to be false' …* (emphasis added)

[62] In addition to the analyses of the evidence set out previously, Henry also stated in his witness statement that 29 January 2020 CA order "lacked clarity". In cross-examination, Henry admitted that the CA order was "not clear" about the AC3 lands.

[63] Further, in cross-examination, Ravin too admitted, multiple times, that the CA order "lacked clarity" and was "unclear".

[64] And yet, Henry and Ravin published the notice or caused it to be published. And they did so with reckless disregard for whether the content of the notice, particularly about the AC3 lands, was true.

My Finding

[65] I reiterate that I find that Henry and Ravin published the notice or caused it to be published, with a reckless disregard as to whether the content of the notice was true or false.

The Fifth Issue: Whether The Plaintiffs Are Entitled To Punitive Or Exemplary Damages?

Libel Committed For Some Form Of Material Or Financial Gain

[66] Exemplary damages are punitive and not compensatory. Exemplary damages can be awarded, but only in "rare and exceptional circumstances". Exemplary damages can only be awarded if the defendant committed the libel "with the motive of material gain", or to be "better off financially", or to obtain an "economic advantage" or "profit" – *Lim Guan Eng v. Ruslan Kassim* (*supra*).

[67] In *Lim Guan Eng v. Ruslan Kassim* (*supra*), the Federal Court held:

> [189] Taking the matter further, *if the defendant acted with the motive of material gain* in the belief that he would be better off financially if he violated the plaintiff's rights than if he did not, then an award of exemplary damages can be considered. However, since exemplary damages are punitive in nature and can have a chilling effect on free speech, *it should be a matter of legal principle that damages of this nature can only be justified in rare and exceptional circumstances where it is clearly established that the defendant is guilty of the wilful commission of a tort and it is necessary that he be then punished* by disgorging whatever economic advantage or profits he has made as a result of his unlawful conduct. In essence, *it must be conduct motivated by mercenary considerations* which call for punitive damages (see *John v. MGN*). (emphasis added)

[68] To consider granting exemplary damages, Henry's and Ravin's conduct must justify punishing them with additional damages which are over and beyond just compensatory damages. The consideration should hinge on whether Henry and Ravin published the notice or caused the notice to be published for the purpose of some material or financial gain.

[69] Henry's purpose for publishing the notice or causing the notice to be published was not only to injure the plaintiffs' reputation and damage their business. It was also to obtain financial gain. Henry thought that he or his companies now own the AC3 lands and properties built on them. Henry notified and warned the public (including the AC3 tenants) that they do business with the plaintiffs at their own peril, and that they will be held "accountable" to him, for all the money paid to the plaintiffs in their business transactions with the plaintiffs. Henry wanted the financial and material benefit that comes from owning the AC3 lands and properties.

[70] Ravin's purpose for publishing the notice or causing the notice to be published was to assist Henry as a client. He did it as part of the legal services that he provided and wanted to provide to Henry. He did it for the professional fees for doing Henry's legal work.

My Finding

[71] I find that there is sufficient evidence that Henry and Ravin published the notice or caused the notice to be published primarily for financial or material gain, giving rise to the rare and exceptional circumstances that warrant punishing Henry and Ravin with exemplary damages.

[72] I therefore find that the plaintiffs are entitled to exemplary damages.

The Sixth Issue: Whether Henry Succeeds In The Defences Of Qualified Privilege, Reynold's Public Interest Defence, Absolute Privilege, Justification, *Lucas-box* Defence, And Sections 8, 9 And 11 Of Statutory Defences?

Justification, Lucas-box And Section 8 Defences Are Not Available To Henry

[73] I will first take the defence of justification, the *Lucas-Box* defence, and the s. 8 of the Defamation Act defence, together, as they are variations of the justification defence.

[74] To succeed in these variations of the defence of justification, Henry has to first plead, and then prove, the defamatory meaning of the impugned words in the notice, to be true. In other words, the defamatory words are true, because their meaning is true.

[75] Firstly, the defence of justification is that the meaning of the impugned words is not defamatory of the plaintiffs because the words or statements are true, and therefore, justified. In other words, since the impugned words are in fact true, they cannot be defamatory of the plaintiffs.

[76] It is, however, important to note that the plaintiffs' burden in a libel suit is to prove that the impugned words are defamatory of the plaintiffs. The plaintiffs do not have to prove that the impugned words or statements are false. Defamation law presumes that in the plaintiffs' favour, *ie*, that the impugned words or statements are false.

[77] The burden is on Henry, who pleads the defence of justification, to prove that the impugned words or statements in the notice are true.

[78] The plaintiffs have proven that the contents of the notice concerning AC3 are not true. Contrary to the meaning of the impugned words in the notice, the CA did not grant the AC3 lands to Henry. P1 to P5 continue to own the AC3 lands.

[79] Henry could not prove that the impugned words in the notice are true (such that they are justified to be published). Henry therefore cannot avail himself of the defence of justification.

[80] Secondly, the *Lucas-Box* defence can be summarised like this – the plaintiffs would have pleaded the ordinary and natural meaning of the impugned words in the notice, and assert that the words are defamatory of the plaintiffs. To mount a *Lucas-Box* defence, Henry must plead that the ordinary and natural meaning of the impugned words in the notice is not as the plaintiffs have pleaded as the meaning of the words. Henry must instead plead that the ordinary and natural meaning of the impugned words in the notice bear different meanings, and those other meanings are not defamatory of the plaintiffs.

[81] The Federal Court propounds the *Lucas-Box* defence in this way in *Syarikat Bekalan Air Selangor Sdn Bhd v. Tony Pua Kiam Wee* [2015] 8 CLJ 477; [2015] 6 MLJ 187; [2015] 6 AMR 66; [2015] 6 MLRA 63:

> In substance, the *Lucas-Box* plea of justification as decided by the English Court of Appeal is as follows:
>
> (a) *if a plaintiff, in* its defamation *pleadings, gives a natural and ordinary meaning to the impugned words, the defendant may then rely on* stating in his defence *what he alleged was the natural and ordinary meaning of the words* complained of; and
>
> (b) *a defendant* in defamation proceedings *who wishes to rely on a plea of justification must make clear in the particulars of justification* the case which he is seeking to set up *and must accordingly state clearly and explicitly the meaning which he seeks to justify*.
>
> (emphasis added)

[82] To put it differently and illustratively – the plaintiffs plead that the impugned words in the notice mean A, B and C, and they are defamatory of the plaintiffs. A *Lucas-Box* defence is that the impugned words in the notice do not mean A, B and C. Instead, the impugned words mean X, Y and Z, which meanings are not defamatory of the plaintiffs.

[83] But in Henry's amended defence, Henry did not plead the alternative meaning of the impugned words which are not defamatory of the plaintiffs. Although Henry denied that the impugned words in the notice mean A, B and C, Henry did not plead that the impugned words in the notice have the meanings X, Y and Z, which are not defamatory of the plaintiffs. Henry did not plead the *Lucas-Box* defence.

[84] Henry cannot rely on the *Lucas-Box* defence.

[85] Third, s. 8 of the Defamation Act provides as follows:

> Section 8. Justification.
>
> In an action for libel or slander in respect of words containing two or more distinct charges against the plaintiff, *a defence of justification shall not fail by reason only that the truth of every charge is not proved if the words not proved to be true do not materially injure the plaintiff's reputation* having regard to the truth of the remaining charges.
>
> (emphasis added)

[86] To put in a different way, the s. 8 defence is: where a defendant pleads the defence of justification, and there are certain meanings (of the impugned words) which are true, and there are certain meanings which are not true; then the defence of justification will not fail, if the meanings of the words which are not true do not significantly injure the plaintiff's reputation. In other words, the meaning of the words which the defendant could prove to be true "excuses" the meanings of the words which the defendant could not prove to be true.

My Finding

[87] I find that Henry cannot avail himself of the defence of justification, the *Lucas-Box* defence, and the s. 8 defence, because the impugned words in the notice are not true. Henry also did not adequately plead the *Lucas-Box* defence.

Qualified Privilege And The *Reynolds*' Public Interest Defence Are Not Available To Henry

[88] I reiterate – qualified privilege may be available to Henry if he had a duty to publish the notice, and the recipients (here: the public) had a duty or interest to receive the contents of the notice – *Dr Chong Eng Leong v. Tan Sri Harris Mohd Salleh* [2017] 10 CLJ 657; [2017] 4 MLJ 611; [2017] 4 MLRA 382; [2017] AMEJ 0505 at paras. [55], [56].

[89] Henry argues that at the time of the CA order, he (and his companies) were the owners of the lands and properties in Auto-City Phase 1 and Phase 2. Henry was also a litigant in the dispute concerning the whole Auto-City project, which included AC3. Accordingly, Henry had a duty to inform the public (as it is a tourist destination) about the latest court development on the whole Auto-City project. And the public had a corresponding interest to receive information about the legal developments in court.

[90] I find this argument untenable.

[91] First – the defence of qualified privilege is not a complete, unqualified defence. Qualified privilege is defeated by malice (*ie*, the impugned words were made maliciously), or by reckless disregard (*ie*, the impugned words

were made without caring whether the impugned words were true or not) – *Tuanku Nurzahirah v. Clare Louise Brown & Ors* [2023] 4 CLJ 252; [2023] 11 MLJ 234; [2023] MLRHU 357; at para. [231].

[92] Just as I have found malice on the part of Ravin (above), I find that there was malice on the part of Henry as well. I find that Henry maliciously published or caused the notice to be published.

[93] And even if I am wrong about malice on Henry's part, I find that there was reckless disregard on Henry's part. He was not certain about the terms of the CA order concerning the AC3 lands. Because he was uncertain, he filed a motion for leave to appeal to the Federal Court. Because he was uncertain, he instructed Ravin to write repeatedly to the CA to get clarification about the terms of the CA order. And because he was uncertain, he filed the motion to clarify the terms of the CA order.

[94] Even though he was uncertain about the terms of the CA order concerning the AC3 lands, Henry recklessly, without caring whether it was true that the CA had granted him the rights over the AC3 lands, he published the notice or caused the notice to be published. To me, this conduct constitutes the reckless disregard that defeats Henry's defence of qualified privilege.

[95] Second – I find that Henry had no duty to inform the public about what he perceived was the terms and effects of the CA order. The notice contains these words: "notice is hereby given to the public ..." and "the public is now put on notice". The entire public are not tenants of the AC3 lands and properties built on them. The entire public are not the persons who have business dealings with the plaintiffs. Yet, Henry published the notice to the entire public.

[96] Correspondingly, the entire public does not have any interest in receiving the contents of the notice.

[97] Henry's conduct of issuing the notice to the entire public – when he could have issued the notice specifically to a small class of persons – discloses Henry's malicious intent, or recklessness, to inform the entire public about matters that were adverse to the plaintiffs (and which are not even true).

[98] Third – the CA order was delivered on 29 January 2020. The notice was dated 28 September 2020, which was eight months after the CA order. Henry had eight months to deliberate and consider whether to publish the contents of the notice. When he eventually (eight months later) published the notice, with reckless disregard as to whether the content of the notice is true, it revealed conduct that was actuated by malice. I find that he published the

notice or caused the notice to be published, with the malicious intent that was sufficient to disqualify him from relying on the defence of qualified privilege to absolve him.

[99] As for the *Reynolds*' public interest defence – it allows Henry to publish words and statements about matters of public interest. But the condition is that he must satisfy the requirement of responsible journalism. It should be noted that the *Reynolds*' defence is not only available to journalists or the media. It is available to any person who has a duty to publish words about a matter of public interest, and who has exercised the safeguard of responsible journalism. Exercising responsible journalism means that the person who published the words about a matter of public interest had "acted reasonably" when he published the words – *Syarikat Bekalan Air Selangor* (*supra*) at para. [34].

[100] The Federal Court in *Syarikat Bekalan Air Selangor* (*supra*) set out a non-exhaustive list of factors to consider when deciding whether the defendant (here: Henry) had conducted himself reasonably. The factors include:

(i) the "seriousness of the allegation" contained in the impugned words. The more serious the allegation, "the more the public is misinformed", and the more harm and damage done (if the allegation is not true);

(ii) the "steps taken to verify the information" that is the basis of the allegation;

(iii) whether the defendant (Henry) sought any comment from the plaintiff. The plaintiffs may have information Henry did not possess;

(iv) whether the publication (here: the notice) "contained the gist of (the plaintiffs') side of the story"; and

(v) the "tone of the article". Did Henry merely asked questions about the subject matter of the notice, or did he make the allegations as statements of fact.?

[101] I find that the notice did not disclose a matter of public interest. The ownership of the AC3 lands is not a matter of public interest. It may be a matter of interest to the tenants of the AC3 lands and properties built on them, but not to the public at large.

[102] Even if I am wrong about the notice not being a matter of public interest, *ie*, it is a matter of public interest, I find that Henry has not conducted himself reasonably (has not exercised responsible journalism), to avail himself of the *Reynolds*' defence.

Fair Comment And Section 9 Of The Defamation Act Are Not Available To Henry

[103] As for fair comment, the principles to apply when considering the defence of fair comment include the following principles.

[104] First – these are the elements which a defendant must establish, to avail himself of the defence of fair comment:

(i) the impugned words are comment, "although they may consist of or include inferences of fact";

(ii) the comment is "on a matter of public interest";

(iii) the comment is "based on facts"; and

(iv) the comment is "one which a fair-minded person can honestly make on the facts proved"

– *Joshua Benjamin Jeyaretnam v. Goh Chok Tong* [1989] CLJU 34; [1989] 1 LNS 34; [1989] 3 MLJ 1 at MLJ p. 3; [1989] 1 WLR 1109; [1989] 7 WLUK 306; [1989] 1 MLRA 500.

[105] Second – a comment is "a statement of opinion on facts". "It is comment to say that a certain act which a man has done is disgraceful or dishonourable; it is an allegation of fact to say he did the act so criticised. Gatley, C, *Gatley on Libel and Slander*, 11th edn, Sweet & Maxwell, 2008, at p. 339, which was cited with approval in *Dato' Sri Dr Mohamad Salleh Ismail & Anor v. Mohd Rafizi Ramli* [2022] 5 CLJ 487; [2022] 3 MLJ 758; [2022] 4 AMR 695; [2022] 4 MLRA 718; at para. [31].

[106] Third – to rely on the defence of fair comment, the defendant must first "establish a sufficient substratum of facts" on which he draws inferences (or comments). Then he must establish that the facts on which his comments or inferences were made "must be truly stated so that the readers may form their own opinion whether the comment or inferences were well founded".

[107] In other words, the substratum of facts that the defendant relies on to make his comments or inferences "must be true and existing". "A writer may not suggest or invent facts and then comment upon them, on the assumption that they are true". This means that the defence of fair comment "is not available" to the defendant if he "invented or created the facts he intended to rely" on – *Dato' Sri Dr Mohamad Salleh Ismail* (*supra*) at para. [45].

[108] I find that an allegation of fact is not comment. A notice or a warning, of the kind that was exerted in the notice, which is based on misinformation (based on facts not true) is even less of a comment.

[109] Also, the facts on which Henry asserts that he made a fair comment – that AC3 lands were returned to Henry, and P1 to P5 no longer owned the AC3 lands – are not true.

[110] The elements required to succeed in the defence of fair comment are not satisfied. Henry cannot avail himself of the defence of fair comment.

[111] Section 9 of the Defamation Act is set out here for reference:

> Section 9. Fair comment.
>
> In an action for libel or slander in respect of words consisting partly of allegations of fact and partly of expression of opinion, a defence of fair comment shall not fail by reason only that the truth of every allegation of fact is not proved if the expression of opinion is fair comment having regard to such of the facts alleged or referred to in the words complained of as are proved.

[112] Henry has failed to demonstrate that the s. 9 fair comment defence helps him.

Absolute Privilege And Section 11 Of The Defamation Act

[113] Section 11 of the Defamation Act is set out below for reference and analysis:

> Section 11. Reports of judicial proceedings.
>
> (1) *A fair and accurate and contemporaneous report of proceedings* publicly heard *before any court* lawfully exercising judicial authority within Malaysia *and of the judgment*, sentence *or finding of any such court shall be absolutely privileged, and any fair and bona fide comment thereon shall be protected*, although such judgment, sentence or finding be subsequently reversed, quashed or varied, unless at the time of the publication of such report or comment the defendant who claims the protection afforded by this section knew or ought to have known of such reversal, quashing or variation.
>
> (2) Nothing in this section shall authorize the publication of any blasphemous, seditious or indecent matter or any matter the publication of which is prohibited by law.
>
> (emphasis added)

[114] The notice was not a "fair and accurate" report of court proceedings (the CA proceeding), because the impugned words in the notice were not true. Instead, the impugned words of the notice were not fair and not true.

[115] I do not see how s. 11 gives Henry a defence of absolute privilege.

The Seventh Issue: Whether The Defence Of Qualified Privilege Is Available To Ravin?

The Defence Of Qualified Privilege Is Not Available To Ravin

[116] First – Ravin argues that even if Ravin is found to have published or caused the notice to be published, the defence of qualified privilege is available to him.

[117] But the defence of qualified privilege can only be raised if the notice was published on an occasion of privilege. I reiterate that an occasion of privilege is when Ravin had the duty (social, moral or legal) to publish the notice – to persons who had the corresponding interest to receive (to be informed about) the contents of the notice – *Tun Datuk Patinggi Hj Abdul Rahman Ya'kub* (*supra*), which was affirmed by the CA on appeal, citing the House of Lords' judgment in *Adam v. Ward* [1917] AC 309, at p. 334.

[118] I find, however, that Ravin had no duty to publish the notice or cause the notice to be published in a national daily newspaper to the public. Ravin had no duty to inform the public, including P1 to P5's tenants, about the perceived (but incorrect, *ie*, untrue) outcome about the ownership of the AC3 lands and properties.

[119] Reciprocally, the public, including the tenants, have no corresponding interest to receive false information from Ravin.

[120] Second – Ravin also cites the Singapore case law authority of *Price Waterhouse Intrust Ltd v. Wee Choo Keong And Others* [1994] 2 SLR(R) 1070; [1994] 3 SLR 801; [1994] SGCA 97 – to argue that as a solicitor, Ravin can avail himself of the defence of qualified privilege for his act of publishing or causing the notice to be published. In *Price Waterhouse Intrust* (*supra*), the Singapore CA cited *Baker v. Carrick* [1894] 1 QB 838.

[121] A closer look at the principle propounded reveals that the principle is that if a solicitor's client (here: Henry) had published a libellous statement, and the defence of qualified privilege is available to the client, then if the solicitor, on behalf of the client, published the libellous statement, then the defence of qualified privilege will also be available to the solicitor. In other words, the defence of qualified privilege is extended to the solicitor. This is hardly applicable here in our case. In our case, qualified privilege is not available to Henry and hence is not available to Ravin. Ravin's reliance on *Price Waterhouse Intrust Ltd* (*supra*) is misplaced.

The Eighth Issue: Whether The Plaintiffs' Suit Is An Abuse Of The Process Against Henry And Ravin?

[122] This eighth issue is about Henry's counterclaim for abuse of process. Henry counterclaims general damages and special damages (for "legal fees, expenses and fees") of RM250K.

[123] Ravin's counterclaim is for the plaintiffs filing this suit against him in bad faith. Ravin prays for general, aggravated and special damages as remedies.

[124] I am not going to make a finding that a counterclaim for abuse of process is the same as a counterclaim for filing this suit in bad faith. But I got Henry's and Ravin's affirmation that in answering this eighth issue, I would determine both Henry's and Ravin's counterclaims.

[125] Abuse of process is about a party misusing legal process. Examples of abuse of process include filing legal proceedings for a collateral, improper objective, or filing frivolous proceedings to vex or scandalise another party, or filing legal proceedings to oppress or harass.

[126] Henry and Ravin have produced no evidence of the plaintiffs committing an abuse of the process of the court.

[127] And I do not find that the plaintiffs' action here against Henry and Ravin to be frivolous or unarguable or unsustainable. Instead, I find merit in their claims.

[128] I therefore find that the plaintiffs' suit is not an abuse of the process against Henry and Ravin.

Damages And Quantum Of Damages

[129] The remedy for the tort of defamation (here: libel) is damages. In assessing the quantum of damages, I am to follow the legal principles that include the following principles. One – damages for defamation are "at large". There is "no accepted scale or formula". Damages are awarded "on the merits of each case based on the accepted guidelines" – *Lim Guan Eng v. Ruslan Kassim* (*supra*), at para. [127].

[130] Two – in our defamation law, a company (a corporation) can be granted general damages for loss of goodwill and damage to reputation, without the need to prove actual loss or damage – *Mkini Dotcom Sdn Bhd & Ors v. Raub Australian Gold Mining Sdn Bhd* [2021] 7 CLJ 145; [2021] 5 MLJ 79; [2021] 6 AMR 545; [2021] 5 MLRA 37; at paras. [94], [95].

[131] Three – concerning aggravated damages: aggravated damages are not confined to cases involving "the defendant's high handedness or oppressive actions". Instead, "a variety of circumstances" can justify an award of aggravated damages. A further elaboration of the application of aggravated damages was cited by the Federal Court in, like so – aggravated damages are "compensatory damages", awarded as "additional compensation", where there has been "intangible injury to the interest or personality of the plaintiff", and this injury was "caused or exacerbated by the exceptional conduct of the defendant" – in *Lim Guan Eng v. Ruslan Kassim* (*supra*), at MLJ para. [191] or at CLJ para. [133], citing *Sambaga Valli K R Ponnusamy v. Datuk Bandar Kuala Lumpur & Ors And Another Appeal* [2017] CLJU 500; [2017] 1 LNS 500; [2018] 1 MLJ 784; [2018] 4 AMR 745; [2018] 3 MLRA 488.

[132] Since I am guided that a company can be awarded general damages for defamation for the loss of goodwill and damage to reputation, I form the view that a company's interest and reputation (substituting "personality") can be aggravatedly injured by the exceptional conduct of the defendant. I find

support for this view in the case law authority of *WLP Industrial Solutions (M) Sdn Bhd v. KL-Kepong Rubber Products Sdn Bhd* [2011] CLJU 818; [2011] 1 LNS 818; [2011] 6 MLJ 623 at MLJ paras. [44] to [49]; [2011] 8 MLRH 175.

[133] Four – a "global award of damages for compensatory and aggravated damages" should be made. In other words, an amount for aggravated damages should not be separately awarded. If aggravated damages are to be given, an award "of a percentage increase from a normal compensatory award" is the prescribed approach in deciding on a global amount – para. [136] of *Lim Guan Eng v. Ruslan Kassim* (*supra*). The Federal Court held that it would be "unrealistic to allocate different amounts for injury to reputation, for vindication, for hurt feelings and for aggravation", citing the CA judgment in *Chin Choon v. Chua Jui Meng* [2005] 2 CLJ 569; [2005] 3 MLJ 494; [2005] 3 AMR 189; [2004] 2 MLRA 636.

[134] Five – exemplary damages are punitive and not compensatory. Exemplary damages can be awarded, but only in "rare and exceptional circumstances". Exemplary damages can only be awarded if the defendant committed the libel "with the motive of material gain", or to be "better off financially", or to obtain an "economic advantage" or "profit" – para. [131] of *Lim Guan Eng v. Ruslan Kassim* (*supra*).

[135] Six – the quantum of an award of damages is to compensate the plaintiff, and not so much to punish the defendant. On the one hand, the amount of damages is to compensate the plaintiff for the injury to his good name and reputation, and the hurt done to his feelings. On the other hand, the amount of damages should not be excessive.

[136] Our courts have stopped the "trend" of awarding damages for defamation in the millions of Ringgit. Defamation suits should not be allowed to be "used as an engine of oppression". And "the days of million Ringgit award for defamation has long gone and consigned to history" – *Liew Yew Tiam & Ors v. Cheah Cheng Hoc & Ors* [2001] 2 CLJ 385 at CLJ p. 395; [2001] 2 AMR 2320; AMR p. 2331; [2001] 1 MLRA 125; and *Syed Nadri Syed Harun & Anor v. Lim Guan Eng & Other Appeals* [2019] 2 CLJ 631; [2019] 4 MLJ 259; [2019] 2 MLRA 387; at para. [32].

[137] Seven – damages multiply when justification fails. When the defendant pleads the defence of justification and sets out to prove the truth of the impugned words, and he fails, the court should consider increasing the quantum of damages to award. Put differently, "the more the libel gets away from the truth the greater is the effect on the award of damages". "The closer the libel is to the truth the less the damages must be" – *MGG Pillai v. Tan Sri Dato Vincent Tan Chee Yioun & Other Appeals* [1995] 2 CLJ 912; [1995] 2 MLJ 493 at MLJ p. 526; [1995] 2 AMR 1776 at AMR pp. 1814 and 1815; [1995] 1 MLRA 322 – the CA citing Bouck J in *Neeld & Ors v. Western Broadcasting Co Ltd* [1976] 65 DLR 574 (3d) at p. 576.

General And Aggravated Damages

[138] I award aggravated damages to the plaintiffs because of Henry's and Ravin's following conduct:

(i) both Henry and Ravin published the notice or caused the notice to be published, with reckless disregard for whether the impugned words of the notice was true or not. The impugned words of the notice were not true;

(ii) Henry published the notice with the intent of injuring the plaintiffs' reputation and damaging the plaintiffs' business; and

(iii) both Henry and Ravin refused to apologise, or retract the notice, or at least correct the content of the notice, even after it was verified that the content of the notice was not true, when the sealed CA order was extracted (in February 2021). Separately, Ravin could have, to some extent, disassociated himself from the impugned words of the notice, but he did not.

[139] The plaintiffs' goodwill and reputation are demonstrated through the evidence. Auto-City was recognised and endorsed by the Penang State Government. Promotional flyers promoted the events at Auto-City. P1 to P5's revenue consists of rental proceeds paid by their tenants for the AC3 lands and the properties built on them. The financial statements produced disclose their sizeable revenue.

Exemplary Damages

[140] I have dealt with and made my findings on exemplary damages under the fifth issue above.

Case Law Authority On The Quantum Of Damages To Award

[141] In *Mkini Dotcom* (*supra*), the CA awarded general damages for loss of goodwill and "vindication of reputation" at RM200,000. The CA's award was upheld by the Federal Court.

Conclusion

[142] I allow the plaintiffs' claim against Henry and Ravin. I dismiss Henry's and Ravin's counterclaim against the plaintiffs.

[143] I make this order:

(i) the defendants are to pay RM120,000 to each of P1 to P5 as general and aggravated damages;

(ii) the defendants are to pay RM60,000 to P6 and P7 respectively as general and aggravated damages;

(iii) the defendants are to pay RM20,000 to each of P1 to P5 as exemplary damages;

(iv) the defendants are to pay RM10,000 to P6 and P7 respectively as exemplary damages;

(v) interest at 5% per annum on all amounts of damages awarded from the date of judgment (14 August 2025) to the date of full payment;

(vi) an injunctive order prayed for in prayer 25(g) of the amended statement of claim;

(vii) the order for the publication of an apology as prayed for in prayer 25(f) of the amended statement of claim, once in The Star, and of the same size as the notice, to be placed in the legal notice section of The Star; and

(viii) the first defendant (Henry) is to pay to the plaintiffs costs of RM30,000, and the second defendant (Ravin) is to pay the plaintiffs costs of RM30,000, subject to the allocator.